IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

WP(C).No. 3985 of 2007(Y)

PETITIONER:

SAJ FLIGHT SERVICES (P) LTD.,
AIRPORT, TRIVANDRUM, REPRESENTED BY ITS
DIRECTOR, REJI VARGHESE.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS:

KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
VYDUTHI BHAVANAM,
PATTOM, TRIVANDRUM- 695004.

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/09/2007, ALONG WITH WPC NO. 33904 OF 2006 & CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF JUDGMENT OF THIS HOB'BLE COURT IN O.P. NO.10068/1996-M.

P2: TRUE COPY OF COMMON JUDGMENT DT.9.11.2005 OF THIS HON'BLE COURT IN WA NO.538/2004 & CONN. CASES.

P3: TRUE COPY OF STATEMENT WITHOUT ANNEXURES DT.17.1.2006 SUBMITTED BY PETITIONER BEFORE THE RESPONDENT.

P4: TRUE COPY OF ADDITIONAL STATEMENT WITHOUT ANNEXURES DT.19.6.2006 SUBMITTED BY PETITIONER BEFORE RESPONDENT.

P5: TRUE COPY OF ADDITIONAL STATEMENT AND DOCUMENTS DT.20.6.2006 SUBMITTED BY PETITIONER BEFORE RESPONDENT.

P6: TRUE COPY OF ORDER DT.4.11.2006 ISSUED BY RESPONDENT TO PETITIONER.

P7: TRUE COPY OF NOTICE DT.20.10.2007 ISSUED BY RESPONDENT TO PETITIONER.

P8: TRUE COPY OF INVOICE DT.20.1.2007 FOR RS.27,16,090/- ISSUED BY RESPONDENT TO PETITIONER.

P9: TRUE COPY OF REPLY DT.24.1.2007 SUBMITTED BY PETITIONER TO RESPONDENT ALONG WITH ENCLOSURES 1-8.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

.....

W.P.(C) Nos.3985 of 2007, 32692, 33904,
34514 & 32376 of 2006

.....

Dated this the 5th day of September, 2007.

JUDGMENT

These connected cases are filed by low tension consumers of electricity challenging common order produced as Ext.P2 issued by the Secretary, KSEB reducing penal charges for unauthorised load at two times the rate applicable under clause 42(d) of the Conditions of Supply of Electrical Energy as against three times provided therein. The petitioners admittedly had additional unauthorised load during inspection conducted by APTS and penal bills were raised charging three times for fixed charges and three times for proportionate current charges originally. However, the levy was contested in appeal and in this court. In between, the Board issued order on 18.9.2002 amending clause 42(d) thereby limiting the penal charges only on fixed charges and not on proportionate current charges. The effective date of amendment was 18.9.2002. In other words, violations noticed prior to 18.9.2002 were subject to penal charges under the provision that originally existed. This was challenged in Writ Petition and the same was allowed by Single Judge. However, in Writ Appeal, judgment of which is produced as Ext.P2 in W.P. 3985/2007, the Division Bench upheld the

amendment prospectively and held that penal bills could be raised under the unamended provisions for any period prior to the date of amendment. However, in the said judgment this court observed that maximum penalty is not called for in cases of technical violation and individual cases are to be considered by the KSEB. On going through Ext.P2 judgment it is clear that this court expected the KSEB to reduce the penal charges wherever mitigating circumstances existed. In fact, the levy of penal charges provided under clause 42(d) is for six months prior to the date of detection and the penal charge could be imposed for a lesser period only on party establishing that additional load was used for lesser period than six months. Even though the remand order by the Division Bench does not give any guidelines, probably there may be mitigating circumstance for reducing penalty such as the quantum of unauthorised load in relation to the connected load, the applications if any filed by consumers for regularisation of additional load at the time of detection and the like. I do not want to exhaustively deal with the circumstances that may entitle parties for lesser penal charges. In any case I am in agreement with the contention of the petitioners that when the court orders matter to be considered with reference to facts of each case, the Secretary of the Board is not justified in issuing a common order applicable to all the parties irrespective of the circumstances

in which they are raised, even though the order may be to some extent favourable to all parties uniformly. The specific facts of each case have to be separately considered and reduction if any has to be granted only with reference to the mitigating facts available in each case. In the circumstances, Ext.P2 which is the common order issued to all the petitioners is vacated with direction to the Secretary, KSEB to reconsider the case of waiver of each applicant with reference to facts after giving an opportunity to substantiate their case with facts and circumstances warranting reduction. I make it clear that the Secretary should pass individual orders in each case with reference to facts and grounds raised by the parties after hearing them. The Secretary is directed to pass orders within six weeks from the date of production of copy of this judgment.

The W.Ps. are disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms